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In the Supreme Court of the United States

OCTOBER TERM, 1975

Nos. 74-1110 and 74-1124

EASTERN KENTUCKY WELFARE RIGHTS ORGANIZATION, ET AL.,
Petitioners,

vs.

WILLIAM E. SIMON, SECRETARY OF THE TREASURY, ET AL.,
Respondents.

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Petitioners,

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA COURT

MOTION OF UNITED METHODIST CHURCH AND AMERICAN ASSOCIATION OF HOMES FOR THE AGING FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF OF UNITED METHODIST CHURCH AND AMERICAN ASSOCIATION OF HOMES FOR THE AGING AS AMICUS CURIAE

(Counsel on Inside Cover)

E. L. MUNSONHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, 421-3030

EUGENE T. HACKLER and
PETER V. RUDDICK
HACKLER, LONDERHOLM, SPEER, VADER
& AUSTIN
P. O. Box 1
Olathe, Kansas 66061
Telephone: 913-782-1000
Attorneys for United Methodist Church and American Association of Homes for the Aging

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The United Methodist Church and the American Association of Homes for the Aging respectfully move this court for leave to file the accompanying brief in this case as *amicus curiae*. The consent of the attorney for The Secretary of the Treasury, Et Al. has been obtained, but the attorney for Eastern Kentucky Welfare Rights Organization, Et Al. refused to consent to the filing of a brief by the United Methodist Church and the American Association of Homes for the Aging as *amicus curiae*.

The applicant United Methodist Church has an interest in this case in that it sponsors, through its Division of Health and Welfare Ministries, numerous non-profit hospitals and homes for the aged across the county. Most of these institutions now enjoy 501(c)(3) exemption from federal income taxes. In both the continuation of their exemption from federal income taxation and in state exemptions from ad valorem property taxation, the legal definition of "charity" is all-important. Whether a "charitable purpose" under a variety of tax laws includes the promotion of health and other activities socially beneficial in themselves—but not necessarily dependent on their provision for free or below cost—may mean the life or death of many of these institutions, or at the very least, increased financial burdens on aged and infirm patients and residents already in hardship. The decision in this case may be expected to carry great weight in state-level judicial and legislative determinations of tax-exempt status for such institutions, since the legal definition of "charity" is the singularly most important issue in those determinations.

This applicant can present the view of the church-related hospital and home for the aged—institutions which could be crippled by an adverse decision in this case. Their position is decidedly *not* one taken against the concept of the provision of free or below-cost services to those in need, a concept to which the United Methodist Church and its Health and Welfare Ministries Division have always and unwaveringly been dedicated, but instead one supporting the position that all infirm and aged people bearing the extra burdens of health and finance needs should be assisted through tax exemption for such non-profit facilities.

The applicant American Association of Homes for the Aging has an additional interest. It is a national membership organization of non-profit facilities for the care of the aged, typically sponsored by churches of almost every religious faith. Non-profit homes for the aged are broadly dependent on tax exemption (from both federal income taxes and state and local property taxes) based on their "charitable" nature—exmeptions which could be lost by a judicial re-definition of "charity".

The brief of the Secretary of the Treasury herein argues that the Revenue Ruling 69-545 provides an appropriate interpretation of the term "charitable" in Section 501(c)(3) of the Internal Revenue Code. The applicants herein believe that their experience with a variety of charitable exemption laws in cases in most of the fifty states and their broad experience in charitable works provides background to expand on this argument of the Secretary, and provide an enlarged insight to the legal definition of "charity" and the great impact the decision in this case may have on laws affecting taxation—both on income and

property—of hospitals and other kinds of charitable institutions across the nation.

EUGENE T. HACKLER
PETER V. RUDDICK
HACKLER, LONDERHOLM, SPEER, VADER & AUSTIN
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INTEREST OF THE AMICUS

This Brief is presented on behalf of the United Methodist Church and the American Association of Homes for the Aging. Their respective interests in this case are described in the foregoing Motion for Leave to File Brief as *Amicus Curiae*. In summary, the United Methodist Church, through its Division of Health and Welfare Ministries, sponsors numerous non-profit hospitals and homes for the aging in most of the fifty states. The American Association of Homes for the Aging is a membership organization of non-profit facilities for the elderly across the nation. The interest of these organizations derives from the important role of tax exemption to most of their institutions, and their position that a legal redefinition of "charity" by this Court would have a profound effect on judicial and legislative determinations of exemption—both from income and property taxes—at state and local levels across the nation, most of which are traditionally based on the legal definition of "charity" or "charitable purpose."

QUESTION TO BE DISCUSSED

It is recognized that there are important procedural issues in this case. However, the United Methodist Church and American Association of Homes for the Aging will discuss only the substantive issue of whether Revenue Ruling 69-545 is consistent with Section 501(c)(3) of the Internal Revenue Code, and therefore, whether the criteria set forth in Revenue Ruling 69-545 properly describe a "charitable purpose."

Additionally, it is noted that the law as regards hospitals on this specific issue has been carefully and thoroughly briefed in this case by the American Hospital

Association as *amicus curiae*, and reiteration of that organization's position will be avoided.

The United Methodist Church and American Association of Homes for the Aging will direct discussion toward the legal definition of "charity" and "charitable purpose" with emphasis on the possible impact on non-profit hospitals and homes for the aging across the nation, both in terms of 501(c)(3) exemption and property tax exemptions.

SUMMARY OF ARGUMENT

"Charitable purpose," as used in Section 501(c)(3) of the Internal Revenue Code, is not restricted to the narrow popular meaning of relief of poverty, but extends to the generally accepted, and more broad, legal meaning. The majority rule in the United States, developed in cases on a variety of tax-exemption schemes but all turning on the definition of "charity" or "charitable purpose," is that these words encompass a good deal more than mere almsgiving. They include many forms of public beneficence, including various enterprises dedicated to the general improvement of mankind, even if operated at moderate cost to the beneficiaries, provided that there is no profit or private benefit inuring to the trustees, sponsors or any other individual. Non-profit hospitals and non-profit homes for the aging are these kinds of enterprises.

Tax exemption is vital to non-profit hospitals and non-profit homes for the aging, and the loss of such status would result in failure of many such institutions, or at the very least substantial increases in cost to already heavily-burdened beneficiaries—not to mention the increased direct burden on government. A decision adverse

to the Secretary of the Treasury in this case would deal a direct blow to non-profit hospitals, and at least an indirect effect on homes for the aging. Additionally, such a decision may be expected to have a dramatic effect on the status of property tax exemptions at state and local levels, almost all of which revolve around the legal meaning of "charity".

Prevailing American law recognizes the broad meaning of charity as including these kinds of socially beneficent activities, even where the direct relief of poverty is not involved. Thus, Revenue Ruling 69-545 is consistent with the generally accepted legal definition of "charitable purpose," and is thus a proper interpretation of Internal Revenue Code Section 501(c)(3).

ARGUMENT

I.

"Charitable Purpose," As Used in Section 501(c)(3) of the Internal Revenue Code, Is Not Restricted to the Relief of Poverty but Extends to Broader Forms of Public Beneficence, Such As Practical Enterprises for the Good of a Certain Portion of Humanity With Special Needs Recognized by Society, Operated at Moderate Cost to the Beneficiaries, but Without Profit or Private Benefit to Their Trustees, Sponsors or Any Other Individual.

Section 501(c)(3) of the Internal Revenue Code of 1954 exempts from Federal income taxation organizations "operated exclusively for . . . charitable . . . purposes, . . . no part of the net earnings of which inures to the benefit of any private shareholder or individual . . ." Federal Tax Regulations provide that the term "charitable" in Section 501(c)(3) is used in the "generally accepted legal sense." Treas. Reg. §1.501(c)(3)-1(d)(2) (1959).[1]

What is the generally accepted legal sense of "charitable?" The word "charitable" is not limited to a static, narrow meaning under the law; it changes to keep pace with the development of our society—it expands to meet the needs of social advancement.

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1. Treas. Reg. §1.501(c)(3)-1(d)(2) has been in effect since 1959, unamended through several amendments to the Internal Revenue Code provisions relating to exempt organizations, and may therefore be said to have tacit Congressional approval. The position that the use in 501(c)(3) of "charitable" intends its generally accepted legal sense and not a limited popular sense is also supported by Federal case law. See, for example, *Green* v. *Connally*, 330 F. Supp. 1150, 1157 (D.D.C. 1971), *aff'd per curiam sub nom. Coit* v. *Green*, 404 U.S. 997 (1971).

"It must never be forgotten that the words 'charity' and 'charitable' are technical terms. Since the Statute of Elizabeth, they have had a technical meaning both in England and America, including even those states in which the statute has been repealed or has not been reenacted or adopted.

> 'They are lifted from their popular and lexicographical meaning. In them survives a history from which they have derived a special significance. They condense volumes of controversy and decision into a phrase which must be now read by the growing light under which it has been developed.' "

Zollman, *American Law of Charities*, pp. 122-123, Bruce Pub. Co., 1924.

In the legal sense, "charity" is given a meaning as broad as the generally recognized needs of society, so long as the organization dedicated to meeting them does so without profit or advantage to itself:

> "Although the relief of the poor, or a benefit to them in some way, is in its popular sense a necessary ingredient in a charity, this is not so in the view of the law, and hence a gift to a public use is not unlawful as a charity because it is not limited to the purpose of relieving the sick or poverty stricken, or because it extends to the rich as well as to the poor. A charitable use, where neither law nor public policy forbids, may be applied to almost anything that tends to promote the well-being of social man." 14 C.J.S., *Charities*, pp. 440-441, §12.

This broad view of the legal meaning of "charity" has long been the rule in Federal tax cases. A good long-standing collection of judicial definitions of the term "charitable"

is set forth in *George G. Turnure*, 9 B.T.A. 871 (1927) (Non-Acq.):

> "Charitable" may be used in either a broad or a narrow sense. In its narrow sense, charity means whatever is bestowed gratuitously on the needy or suffering for their relief. In its widest sense, charity denotes all the good affections which men should bear to each other, and in that sense embraces what is generally understood as benevolence, philanthropy, and good will.
>
> A definition of charity used by counsel in the case of *Vidal* v. *Girard*, 2 How. 127, and subsequently quoted with approval in many courts, including the Supreme Court (*Ould* v. *Washington Hospital*, 95 U.S. 303), is as follows: "Whatever is given from the love of God, or for the love of your neighbor, in the catholic and universal sense, given from these motives and to these ends, free from the stain or taint of every consideration that is personal, private or selfish."
>
> In the last cited case it is said: "A charitable use, where neither law nor public policy forbids, may be applied to almost anything that tends to promote the well-doing and well-being of social man."[2]

American law has traditionally recognized the charitable nature of not-for-profit enterprises dedicated to the

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2. For other consideration of the broad meaning of the term "charitable" see *Underwriters' Laboratories, Inc.* v. *Commissioner*, 135 F.2d 371 (7th Cir. 1943), *Robert W. de Forest*, 19 B.T.A. 595 (1930) (Acq.), and more recently *Lorain Avenue Clinic*, 31 T.C. 141 (1958), in which the Tax Court notes that "charitable" is to be construed in accordance "with the meaning in the law of charity which is, generally, a trust for the relief of poverty *and for other purposes beneficial to the community.*" (Emphasis added.)

good of humanity, even where the direct beneficiaries of that dedication are charged moderate fees. Charity has traditionally been held to include:

> "Public beneficence, such as practical enterprises for the good of humanity, operated at moderate cost to the beneficiaries, or enterprises operated for the general improvement and happiness of mankind, . . . provided its income is not used, nor intended to be used, as dividends or profits." *Williamson* v. *Housing Authority,* 186 Ga. 673, 199 S.E. 43 (1938), citing other cases.

The rules of American cases on point are summarized in RESTATEMENT (SECOND), TRUSTS:

> "§368. Charitable purposes include . . . other purposes the accomplishment of which is beneficial to the community . . .
>
> "§372. A trust for the promotion of health is charitable . . . Comment: b. *Charging fees.* A trust to establish or maintain a hospital is charitable, although it is provided that the patients shall pay fees . . .
>
> §374. A trust for the promotion of purposes which are of a character sufficiently beneficial to the community to justify permitting property to be devoted forever to their accomplishment is charitable."

We in the United States are moving rapidly into an era when modern social legislation dramatically denies the stereotyped image of the destitute pauper, the truly "poor" of Dickensian characterization. Today, Social Security, pensions, and other prevalent sources of third-party payor programs increasingly assure that institutions rendering much needed services will receive some payment from, or on behalf of, the beneficiaries of these services. Today we

see public welfare support for those in finanical need clothed with the mantle of a virtual *constitutional right.* (See *Goldberg* v. *Kelly,* 397 U.S. 254, 25 L.Ed.2d 287, 90 S.Ct. 1011 (1970)).[3]

Many institutions such as hospitals and nursing homes which in earlier days before the advent of these modern social programs were furnishing a substantial degree or percentage of such "free" care now find that potential recipients of such "almsgiving" infrequently appear, if at all. This is the encouraging result of our changing attitude toward poor and low-income people in our society, as reflected in current social legislation. The plight of the poor in our country is still a grave one, and a glib gloss-over treatment of their problems is dramatically rejected here. Yet the fact remains that hospitals and homes for the aged are increasingly reimbursed by third parties for their care of the indigent. This circumstance hardly reflects any kind of hardening of the heart on the part of such institutions toward the poor.

Courts generally have not been misled by this evolving circumstance of society. They are recognizing the interwoven fabric of social legislation and contractual rights which result in nearly everyone being "paid for"—whether directly from personal funds or indirectly. One of the earlier but still recent judicial recognitions of this modern

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3. In *Law of the Poor,* La France, et al., West Publ. Co., St. Paul, 1973, the authors point out that welfare law litigation only "emerged in the last half of the 1960's", and that prior to 1965 there were only a handful of cases dealing with the rights of welfare recipients. In 1969 the United States Supreme Court handed down *Shapiro* v. *Thompson,* 394 U.S. 618 (1969), holding the Connecticut one-year welfare residence requirement unconstitutional, and since 1968, the Supreme Court has issued at least eight other major opinions dealing with welfare rights and related matter. Some form of guaranteed income, negative income tax, or similar social program appears imminent, also, thus reducing the ranks of the truly destitute even further.

situation is the decision of the Nebraska Supreme Court in *Evangelical Luth. Good Samaritan Society* v. *County of Gage*, 181 Neb. 831, 151 N.W.2d 446 (1967), where the tax officials were complaining, as expected, that there was little or no "free" care being provided by the Good Samaritan Society's nursing homes in Nebraska, although a number of welfare patients were being cared for. The Nebraska Court took a realistic, up-dated view of the situation in rejecting the tax official's position:

> " 'Formerly all institutions furnishing services of this nature, including both hospitals and nursing homes, were providing care for many patients without a compensation and extended charity in the sense of almsgiving or free services to the poor. *With the advent of present-day Social Security and welfare programs, this type of charity is not often found because assistance is available to the poor under these programs.*' " *Id.* at 449. (Emphasis added.)

Similarly, in *Ev. Lutheran Good Samaritan Society* v. *Dept. of Revenue*, 5 O.T.R. Ad. Sh. 15 (Ore. Tax Ct. 1972), the Oregon Tax Court dealt with a combined nursing home-convalescent hospital in which the "facility was being paid for its services and the evidence reveals that virtually every patient who was not able to pay his own way was eligible for welfare assistance." Because the nursing home-hospital was being paid for "virtually every patient" the Oregon Revenue Department denied a charitable tax exemption, concluding that "no 'charity,' within the concept of 'almsgiving,' is here involved." *Ev. Lutheran Good Samaritan Society* v. *Dept. of Revenue, supra*, at 21. The Tax Court reversed, noting:

> "A charitable corporation, such as the plaintiff . . ., refusing admission to none for whom there is room, will not lose its charitable status because it serves welfare patients and *no other nonpaying patients apply*." *Id.* at 23. (Emphasis added.)

The Court took cognizance of the modern facts of life—that third party-payor programs such as welfare have largely replaced traditional "almsgiving":

> "(T)oday governmental welfare activities are considered necessary to fill a need which at one time was deemed to be sufficiently met through citizens' contributions to private charities. Where once a charitable hospital or nursing home could subsist by virtue of charges to paying patients plus contributions, todays' recognized needs could not be met without the use of statutory welfare aid." *Id.* at 22, 23. (Emphasis added.)

In a recent North Dakota Supreme Court decision, *Evangelical Lutheran Good Samaritan Society* v. *Board of County Commissioners*, 219 N.W.2d 900 (N.Dak., 1974), involving a nursing home, the facts again showed "no evidence that the Devils Lake Home provided care for *any* resident on a 'free" basis . . .", *Id.* at 903. (Emphasis added). The North Dakota Supreme Court nevertheless granted exemption under a statute exempting property of "charitable institutions" which was "used for public charity". (§57-02-08, N.D C.C.). Acknowledging the long standing *policy* of the Society to care for persons without regard to financial ability, the Court simply took a modern view disposing of the traditional "free care" argument advanced by the tax officials, by observing:

> "In earlier years, before the advent of modern welfare programs, many persons sought *free care* from institutions such as those the Society maintains. However, today welfare programs are widespread *and a matter of right*." *Id.* at 908. (Emphasis added.)

And, the Court concluded:

> ". . . [W]e believe that the better reasoned view in these days of widespread welfare programs is that an institution—which is engaged in the charitable purpose of supplying care and attention to the aged and which institution has always had a policy of supplying this care and attention to all who need its services, regardless of financial ability to pay—does not lose its charitable character because such institution charges fees to those patients who need its services, or because it has *never provided care for a patient on a free basis.*" *Id.* at 909 (Emphasis added.)

The Good Samaritan cases do not stand alone. In fact, the majority of American courts, in cases dealing with tax exemption for hospitals and homes for the aging based on the definition of "charity" or "charitable purpose" choose the broader definition of the term and do not require the provision of free services.[4]

> ". . . [Sickness], pain and suffering are the heritage of all. We are continually attended by peril and may at any time, and when least expected, be stricken by misfortune and affliction. No man can be so rich or so circumstanced as to be exempt from this condition. And, if so overtaken, is charity to withhold its ministrations because the stricken sufferer might not be poor? Is the Samaritan to refuse to bind up the wounds of the unconscious man on the wayside because he may have means to pay a physician? Charity, whether public or private, sees the need, or want, or affliction, or suffering, and its first concern is to bring

4. See, for example, cases cited under Section III of the Argument herein, as well as numerous cases cited by American Hospital Association as Amicus Curiae in its brief submitted in this case.

> relief. The question of whether the recipient is able to pay is the merest incident and of minor importance." *Jackson County Missouri* v. *State Tax Commission,* 521 S.W.2d 378, 382 (Mo. 1975).

II.

Tax Exemption Is Vital to Non-Profit Homes for the Aging As Well As Hospitals, and the Continuation of Their Good Works Depends on the Continuation of Tax-Exempt Charitable Status, Even Though Substantial Fees May Be Charged to Beneficiaries.

The ruling in controversy in the case at bar is *Rev. Rul.* 69-545, 1969-2 Cum. Bull. 117, in which the Internal Revenue Service removed from the conditions for granting hospitals exemption from tax the requirement previously imposed in *Rev. Rul.* 56-185, 1956-1 Cum. Bull. 202, that hospitals not refuse treatment to those unable to pay for it. In an analogous fashion, I.R.S. *Rev. Rul.* 72-124, 1972-1 Cum. Bull. 145, superceded *Rev. Rul.* 57-467, 1957-2 Cum. Bull. 313, thereby permitting homes for the aged to obtain tax-exempt status even though, under certain circumstances, they ordinarily admit only persons able to pay the established rates:

> ". . . [It] is now generally recognized that the aged, apart from considerations of financial distress alone, are also, as a class, highly susceptible to other forms of distress in the sense that they have special needs because of their advanced years. For example, it is recognized in the Congressional declaration of objectives, Older Americans Act of 1965, Public Law 89-73, 89th Congress, 42 U.S.C. 3001, that such needs include suitable housing, physical and mental health care, civic, cultural, and recreational activities, and

an overall environment conducive to dignity and independence, all specially designed to meet the needs of the aged. Satisfaction of these special needs contributes to the prevention and elimination of the causes of the unique forms of "distress" to which the aged, as a class, are highly susceptible and may in the proper context constitute charitable purposes or functions *even though direct financial assistance in the sense of relief of poverty may not be involved.*" (Emphasis added.) *Rev. Rul.* 72-124, 1972-1 Cum. Bull. 145, 146.

Whether a determination of invalidity of *Rev. Rul.* 69-545 in this case would have a direct and immediate effect on exemptions for homes for the aging remains, of course, to be seen. But the developments in the law in both areas are analogous, and the various factors leading to the recognition of charitable status even where fees are charged are quite similar in the two cases—a recognition of the effect of modern social trends on traditional concepts of "charity." A redefinition by this Court of "charity" as regards hospitals would necessarily affect the definition of "charity" as regards homes for the aging.

Tax exemptions do not exist in a legislative vacuum; they are a reflection of vital public policy. For hospitals that policy is the need of health care for everyone. For homes for the aging, it is the protection of interests of our rapidly-growing elderly population through provision of multiple levels of care—health care, housing, financial security, nutritional assistance, and a host of all-important social services—the bolstering of pride and integrity, the support of companionship and kindness in a time fraught with loneliness and isolation—an attempt to preserve the dignity of humanity throughout the aging process, and finally the dying process. Such public policies mandate

that the loss of tax exemption, and the resulting financial burdens on such institutions and their patients and residents, can only lead to an increased *direct* burden on *government*.

Non-profit homes for the aged have traditionally accepted the momentous challenge of this public need; the granting of property tax exemption has enabled church and fraternal groups to provide homes for the aged with a comprehensive living environment and care during sickness at a lower cost than would otherwise be possible. If non-profit homes for the aging were deprived of the encouragement of tax exemption, the financial impact on their programs and residents would be severe, and the societal impact would fly in the face of current but long-overdue national recognition of the depth of the problem of care for our elderly citizens.

"It is a matter of common knowledge that aged people require care and attention apart from financial assistance, and the supply of this care and attention is as much a charitable and benevolent purpose as the relief of their financial wants. Every civilized community must provide facilities, either public or private, for the care of the old people, regardless of financial condition, and a bequest to such an institution to further its purposes is of enough social value to be designated as charitable." *In re Henderson's Estate*, 17 Cal. 2d 853, 112 P.2d 605, 607, 608 (1941).[5]

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5. Also see the numerous cases cited and discussed in Section III below.

III.

The Legal Definition of "Charity" Is the Singularly Most Important Factor in State-by-State Judicial Determinations of Income and Property Tax Exemption for Non-Profit Hospitals and Homes for the Aging, and Prevailing American Law Overwhelmingly Recognizes That the Provision of Free Services by Such Non-Profit Organizations Is Not Required for Charitable Status or Tax Exemption.

State after state has by judicial decision exempted from taxation the property of non-profit hospitals and homes for the aged because they fall within the legal definition of "charity" or "charitable purpose." For the sake of brevity and avoidance of repetition, discussion is omitted on the cases dealing with non-profit hospitals, which are universally granted exemption from ad valorem property taxation because they are "charitable."[6]

A selection of cases from various jurisdictions dealing with non-profit homes for the aged and directly analogous issues are as follow:

ARIZONA: The Court of Appeals of Arizona, in *Memorial Hospital* v. *C. L. Sparks*, 9 Ariz. App. 478, 453 P.2d 989 (1969), held in favor of property tax exemption for senior citizen apartments owned and operated by a hospital (with the Court noting that hospital ownership was not controlling). While annual incomes of residents were generally low, rent payments were required and a qualification for entrance was the ability to make the payment.

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6. Again, the hospital cases are thoroughly discussed in the Brief for the Secretary of the Treasury, and the Brief of the American Hospital Association as Amicus Curiae, as filed herein.

CALIFORNIA: The California Supreme Court has had numerous opportunities to consider the issue exhaustively, and has repeatedly concluded that non-profit homes for the aged are "exclusively charitable" and entitled to tax exemption, despite the charging of substantial fees for care.

1. *In re Henderson's Estate*, 17 Cal. 2d 853, 112 P.2d 605 (1941), involved a fraternal home for the aged which required its residents to assign all of their assets to the home upon admission:

> "The bequest in the present case was clearly made for a charitable purpose. Since the enactment of the Statute of Charitable Uses during the reign of Elizabeth, aid to the aged and infirm has been recognized as charitable . . . Relief of poverty is not a condition of charitable assistance. If the benefit conferred has a sufficiently widespread social value, a charitable purpose exists." *Id.* at 607.
>
> ". . . aged people require care and attention apart from financial assistance . . ." *Id.* at 608.

2. *Pacific Home* v. *Los Angeles County*, 41 Cal. 2d 844, 264 P.2d 539 (1953): The home, sponsored by the Methodist Church, granted admission on a single-fee life care contract with the entry charge determined by the life expectance of the applicant and the accommodations selected. Approximately $2,000 per year was contributed to a charitable assistance fund for residents; no other instance of financial charitable assistance is cited by the court, but during the tax years in question, the home operated at a loss. On dissolution, the assets were to go to the church. *Held*: The home is exclusively charitable, and its assets are irrevocably dedicated to charity.

3. *Solheim Lutheran Home* v. *County of Los Angeles*, 152 Cal. App. 775, 313 P.2d 185 (1957), in which the court reapplied the holding of *Pacific Home, supra*.

4. *Fifield Manor* v. *County of Los Angeles*, 188 Cal. App. 2d 1, 10 Cal. Rptr. 242 (1961). The county charged that three homes seeking to retain their welfare exemption from property taxation were not charitable because they were "luxury" apartments whose admissions and care fees were beyond the reach of the average person. Charges for life-care were a lump sum based upon cost. The court upheld exemption:

> "Relief of poverty is not a condition of charitable assistance . . . . The concept of the charity is not confined to relief of the needy and destitute, for aged people require care and attention apart from financial assistance, and the supplying of this care and attention is as much a charitable and benevolent purpose as the relief of their financial wants." *Id.* at 249.

The Court went on to say:

> "Any person, the rich as well as the poor, may fall sick or be injured or wounded and become a fit subject for charity. St. Luke, chapter 10, verses 30-37." (Citing *Dingwell* v. *Seymour*, 91 Cal. App. 483, 498, 267 P. 327, 333 (1st Dist. 1928)).
>
> ". . . [I]t seems clear that a home for the aged which caters to wealthy persons and furnishes them those services and care needed by the old and the infirm, rich or poor, does not cease to be a charitable institution so long as its charges do not yield more than the actual costs of operation." 10 Cal. Rptr. at 254.

DELAWARE: In *Electra Arms Apartment and Medical Center Foundation, Inc.* v. *City of Wilmington*, 254 A.2d 244 (Del. Supr., 1969), the Delaware Supreme Court upheld property tax exemption for a complex providing housing and medical services to elderly residents, notwithstanding the charging of rent, apparently to all its residents. The fact that after its large mortgage was paid off the corporate charter could be altered to eliminate the nonprofit dedication was held not to be controlling.

FLORIDA: The Florida Supreme Court has upheld the "exclusively charitable" exemption of a home for the aged—*regardless* of the lack of financial need or even physical or mental infirmity of its residents. *Jasper* v. *Mease Manor, Inc.*, 208 So.2d 821 (Fla. 1968). The *Jasper* case brought the state of Florida firmly in line with the majority American view that, given the pressing need for facilities to care for the aged, they are objects of charity regardless of financial need; thus, nonprofit institutions caring for them are "exclusively charitable" under law.

In fact, Florida legislation passed in 1971 prescribing an "income test"—maximum annual incomes for residents—for determining ad valorem tax exemption for homes for the aged was declared unconstitutional by the Florida Supreme Court. The test was held to be overly restrictive in failing to emphasize the overall purpose or use of the organization. *Presbyterian Homes of the Synod of Florida* v. *Earl K. Wood*, 297 So.2d 556 (Fla. 1974).

GEORGIA: The Georgia Court of Appeals has held in favor of tax exemption for a home for the aged, even though the home had admission restrictions requiring that each incoming resident be ambulatory and pass a medical examination, as well as be financially able.

> "'Charity', as used in tax exemption statutes, is not restricted to the relief of the sick or indigent, but extends to other forms of philanthropy or public beneficence, such as practical enterprises for the good of humanity, operated at moderate cost to the beneficiaries, or enterprises operated for the general improvement and happiness of mankind." *Peachtree on Peachtree Inn, Inc.* v. *J. L. Camp*, 120 Ga. App. 403, 170 S.E.2d 709, 714 (1969).

This position was affirmed in *Central Board on Care of Jewish Aged, Inc.* v. *Henson*, 120 Ga. App. 627, 171 S.E.2d 747 (1969), a case involving a home which, in addition to health and financial entrance requirements, restricted membership to people of the Jewish faith; the Court again held in favor of tax exemption:

> "The concept of charity is not confined to the relief of the needy and destitute, for 'aged people require care and attention apart from financial assistance, and the supply of this care and attention is as much a charitable and benevolent purpose as the relief of their financial wants.'" *Id.* at 750, citing *Bozeman Deaconess Foundation* v. *Ford*, 151 Mont. 143, 439 P.2d 915 (1968).

INDIANA: The Appellate Court of Indiana held that a retirement home operated by a non-profit organization which provided for full care of its aged occupants and devoted all income, after payment of expenses, to purposes of maintaining the home, was entitled to total exemption from property taxes. *State Bd. of Tax Comm'rs* v. *Methodist Home for the Aged*, 143 Ind. App. 419, 241 N.E.2d 84 (1968).

MARYLAND: In an old case—still recognized as good law—the Maryland Supreme Court did not question the

charitable nature of a home requiring an entrance fee and a conveyance of all property of the applicant. The issue arose in a suit brought by the home to recover assets from the estate of a resident who had concealed property. The court noted:

> ". . . [T]his and similar charities are directly within the line of a sound and humane public policy. They do not only tend to relieve suffering in the individual, but tend to keep them from being a charge upon the general public. For this purpose money is necessary . . . ." *German Aged People's Home* v. *Hammerbacker*, 64 Md. 595, 3 A. 678, 680 (1886).

In a much more recent case, the Maryland tax court upheld the position:

> "Here we have a corporation devoted to improving the living conditions of older people. It is clear that the relief of the aged is a charitable purpose. (Statute of Elizabeth, 13 Eliz. Ch. 4, 1001).
>
> "We cannot agree that to give a person something at cost is not an act of charity . . . ." *Department of Assessments of Baltimore City* v. *St. Mary's Roland View Towers, Inc.* (Maryland Tax Court, City App. #320 and #397, August 25, 1965).

MASSACHUSETTS: In a 1938 case before the Supreme Judicial Court of Massachusetts, the "charitable character" of a nonprofit home for the aged was at issue. Testator left funds to an existing nonprofit home for the aged, to be used to finance a new building for the home; another beneficiary challenged the bequest, in part, on the basis that it was not properly charitable. The Fisher Home had six or seven residents, *all* of whom had contributed funds to the home, aggregating $14,000. Earlier

residents had contributed $50,000, and those gifts constituted the treasury of the corporation, producing about $3,000 income a year. An additional $800 a year was contributed by another charitable corporation. Held: The fact of contributions by residents "does not deprive the corporation of its charitable character." *Old Colony Trust Co.* v. *O. M. Fisher Home,* 301 Mass. 1, 16 N.E.2d 10, 11 (1938).

MINNESOTA: In a case involving a nursing home, the Minnesota Supreme Court held in favor of tax exemption because the home was dedicated to the charitable purpose of care for the aging, notwithstanding charges to beneficiaries and a "profitable" operation:

> "Thus, in *Christian Business Men's Committee of Minneapolis, Inc.* v. *State,* 228 Minn. 549, 555, 38 N.W.2d 803, 809 (1949), the words 'purely public charity' were referred to as follows:
>
> "* * * The word 'purely' means 'wholly', and 'solely,' and 'exclusively' in such exemption provisions and qualifies the use that may be made of the institution's property. *State* v. *Willmar Hospital, Inc.,* 212 Minn. 38, 41, 2 N.W.2d 564, 566 (1942). What is meant by a purely or exclusively charitable use of property is a direct, immediate, and actual application of the property itself to the purposes for which the charitable institution is organized. It is the direct and immediate use of the property, and not the use of the income therefrom, that is determinative of whether the property is used for tax-exempt purposes.
>
> "Nor does the fact that an organization claiming exemption as one of 'purely public charity' operates at a profit derived from charges made to its patients

> nullify its status as an institution of 'purely public charity' if under its charter its operations are intended for the benefit of the public generally and thereunder none of such profits can be paid to stockholders or others." *Assembly Homes, Inc.* v. *Yellow Medicine Co.,* 273 Minn. 197, 140 N.W.2d 336, 340 (1966).

MONTANA: In an often-cited opinion, the Montana Supreme Court squarely joined the majority position. *Bozeman Deaconess Foundation* v. *Ford,* 151 Mont. 143, 439 P.2d 915 (1968). In that case, the home, built at a cost of approximately $2,000,000, required the payment of life-care occupancy fees ranging from $7,000 to $32,000 and monthly maintenance charges of from $150 to $250. The home was open to applicants without regard to race or religion, the only requirements being that the applicant be at least 62 years old, or married to someone 62 or older. The court held that the home was an "institution of purely public charity," and fully exempt from property taxation under state law. Upholding the majority view, the court stated:

> "It may be that appellants [tax officials] feel the standard of care, the excellence of accommodations and the mode of life accorded by this facility, all reflected by the size of the occupancy and maintenance fees, and the physical plant and facilities are inconsistent with the usual concept of charity. But 'charity' to the law has a much broader meaning than that accorded it in common speech. (15 Am. Jur. 2d, p. 8.) The scope of charity and the standards under which it is administered are not frozen by the past, but keep pace with the times and the new conditions and wants of society. (Zollman, American Law of Charities, pp. 121, 123)." *Id.* at 918.

NEBRASKA: The Supreme Court of Nebraska has held to a strict line of denying exemption to so-called "homes for the aged" which provided *only* housing for the elderly. See *Christian Retirement Homes, Inc.* v. *Board of Equalization of County of Lancaster,* 186 Neb. 11, 180 N.W. 2d 136 (1970) and *OEA Senior Citizens, Inc.* v. *County of Douglas,* 186 Neb. 593, 185 N.W.2d 464 (1971).

However, tax exemption is granted where a wider range of services is provided:

> "Charity is defined as being something more than mere almsgiving or the relief of poverty and distress, and it has been given a significance broad enough to include practical enterprises for the good of humanity operated at a moderate cost to those who receive the benefits." *Evangelical Lutheran Good Samaritan Society* v. *County of Gage,* 181 Neb. 831, 151 N.W.2d 446, 447 (1967).

NEW YORK: Two New York cases have exempted nonprofit homes for the aged which made charges to residents:

1. *In re Vassar's Estate,* 127 N.Y. 1, 27 N.E. 394 (1891). The case involved the inheritance tax exemption of a bequest to the Vassar Brothers Home for Aged Men in Poughkeepsie, New York. Upon entering the home, all residents paid $250.00 as an entrance fee, or somewhat less if they were of advanced age. In addition, they were required to transfer all property they might have to the home. Held: The charges do not deprive the institution of tax exempt status as a charity.

2. *American-Russian Aid Association* v. *City of Glen Cove,* 41 Misc. 2d 622, 246 N.Y.S. 2d 123 (1963). The home consisted of five residences, housing a total of 45 or 50 aged

persons, "unable to work, although ambulatory and reasonably able to care for themselves." Some residents were on welfare, but many were apparently subsidized by relatives with funds. An "annual recurring deficit" was experienced by the home. Held: Except as "exclusively charitable." The room rent "does not cancel the stamp of charity. Profits do not accrue; the rents received aid the plaintiff in carrying out its beneficent objectives." *Id.* at 127.

OHIO: In *Carmelite Sisters, St. Rita's Home* v. *Board of Review,* 18 Ohio St. 2d 41, 247 N.E.2d 477 (1969), the question was whether the nonprofit home for the aged was liable to contribute to the state unemployment compensation fund, rather than tax exemption. The issue, however, was the same: Were the home's activities "confined exclusively to rendition of service for charitable purposes?" The Court held that it was, even though residents paid all or a large part of the cost of their upkeep.

OREGON: In the case of *Ev. Lutheran Good Samaritan Society* v. *Department of Revenue,* 5 O.T.R. Ad. Sh. 15 (Ore. Tax Ct. 1972), the Oregon Tax Court held in favor of exemption for plaintiff's nursing home facility, even though some payments were received for services to all its residents, either directly or through welfare payments by the State.

PENNSYLVANIA: The Supreme Court of Pennsylvania allied itself squarely with the prevailing view that nonprofit care of the aged is a "purely public charity." *In re Tax Appeals of the United Presbyterian Homes of the Presbytery of Huntingdon,* 428 Pa. 145, 236 A.2d 776 (1968). The home in question was similar to other homes for the aged exempted from property taxation in the cases set forth herein. The home was largely self-supporting, mainly by

payment from residents. Tax authorities argued that this destroyed its qualification for exemption, but the court disagreed:

> "To adopt this argument of the appellants would require us to hold that whenever a nonprofit institution made a charge for its care or services to any resident or patient, the institution would be precluded from obtaining tax exemption. Consequently, hospitals which charge large sums for the care of and services to paying patients, and colleges, and universities which charge tuition to countless students, would not be entitled to real estate tax exemption. This interpretation and result is not required by the language or spirit of the Constitution of Pennsylvania or of the legislation pertaining to tax exemption." *Id.* at 780.

TEXAS: The Supreme Court of Texas will soon decide an appeal on the tax-exempt status of a nursing home facility. An appellate court held in favor of exemption, notwithstanding the fact that payments were made for most residents—if not directly, through third-party welfare sources. *City of McAllen* v. *Ev. Lutheran Good Samaritan Society*, 518 S.W.2d 557 (Tex. Civ. App. 1975).

WISCONSIN: *Milwaukee Protestant Home for the Aged* v. *City of Milwaukee*, 41 Wis. 2d 284, 164 N.W.2d 289 (1969) involved a home for the aged with a thirty-four (34) bed nursing home. Residents were charged, in 1969, entrance endowments (up to $15,500.00) and monthly fees ($150.00 to $160.00). The Wisconsin Supreme Court held that the home involved was operating as a public charity:

> "In the minds of some, the phrase objects of charity still conjures up a soup kitchen picture of penniless drifters lined up outside a skid row mission.

> Concern for the plight of the entirely destitute has its proper place, but the word benevolent has no in-built implication or requirement of alms-giving. To help retired persons of moderate means live out their remaining years is benevolent whether or not it is also considered, as we would consider it to be 'charitable'." *Milwaukee Protestant Homes, supra,* at pp. 296-297.
>
> ". . . [W]e conclude that the property of the Milwaukee Protestant Home for the Aged, including the Bradford Terrace Addition and its convalescent center, is exempt from property taxation. . . ." *Id.* at 298.

FEDERAL: The only Federal case dealing directly with the question of whether a health-care institution may charge its beneficiaries and still retain its income-tax exemption is one which predates both *Rev. Rul.* 69-545 relating to hospitals and *Rev. Rul.* 72-124 relating to homes for the aged. *Salem Lutheran Home* v. *Comm'r,* 2 T.C.M. 157 (1943). In that case, only a few "residents had ever been admitted without charge," and those "only temporarily." An endowment fund had been established for the purpose of helping indigent residents, but it was "not yet sufficient for any extensive use." During fourteen years of operation, donations to the home amounted to only $18,-000.00. The Internal Revenue Service claimed that the home was not "exclusively charitable" and that it should not be exempted from federal taxes. Held: Exclusively charitable and tax-exempt:

> "In other words, is the operation of a home for the care and comfort of aged persons, without profit to any individual and from purely religious or philanthropic motives, a charity within the intendment of the statute? We think that it is.

"It does not operate for the benefit of any select group of individuals or institutions. The fact that it is necessary for petitioner to charge a substantial admission fee in order to carry on its work does not deprive it of the status of a tax exempt corporation." *Id.* at 159.

CONCLUSION

For the above reasons, together with those argued by the Secretary of the Treasury and the American Hospital Association as *amicus curiae* in their respective briefs filed herein, *Rev. Rul.* 69-545 is consistent with Section 501(c)(3) of the Internal Revenue Code; therefore the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

EUGENE T. HACKLER and
PETER V. RUDDICK
HACKLER, LONDERHOLM, SPEER, VADER & AUSTIN
P. O. Box 1
Olathe, Kansas 66061
Telephone: 913-782-1000
Attorneys for United Methodist Church and American Association of Homes for the Aging